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Letter dated 9 August 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 30 July 2003 (S/2003/788). The Counter-Terrorism Committee has received the attached fourth report from Ecuador submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrei I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Note verbale dated 30 July 2004 from the Permanent Mission of Ecuador to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Ecuador to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and, in reference to his note S/AC.40/Sub.Co.A/OC.560 of 23 January 2004, has the honour to transmit, for his information, the supplementary report of the Republic of Ecuador submitted pursuant to Security Council resolution 1373 (2001).

It is important to reiterate that thorough compliance with most of the Committee's requirements is not possible, since they are closely linked to domestic legislative reforms, such as the Penal Code and the Money-laundering Act, that are still in the process of being enacted by the National Congress. The main provisions of these reforms are outlined in the supplementary report.

It also wishes to inform the Counter-Terrorism Committee that the Government of Ecuador will submit an additional report containing the relevant information on the effectiveness of the controls preventing access to weapons by terrorists.

Furthermore, and as the Counter-Terrorism Committee is aware, the National Workshop on Assistance with Anti-terrorist Legislation was held in Quito on 29 and 30 July. The Workshop was organized jointly by the Government of Ecuador and the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime. Its conclusions and recommendations will help to clarify the comments of the Counter-Terrorism Committee, particularly those relating to obligations under international instruments to combat terrorism and those set out in Security Council resolution 1373 (2001).

Lastly, we should also like to reiterate that, as a result of the meeting held with the Subcommittee of the Counter-Terrorism Committee in April of this year, the Government of Ecuador, through the United Nations Office on Drugs and Crime, secured a commitment from the Counter-Terrorism Committee to provide the necessary assistance for the adoption of anti-terrorist legislation, and in the areas of international cooperation and reciprocal judicial assistance.

The Permanent Mission of Ecuador to the United Nations takes this opportunity to convey to the Chairman of the Counter-Terrorism Committee the renewed assurances of its highest consideration.

Enclosure*

Report of the Republic of Ecuador to the Counter-Terrorism Committee of the Security Council of the United Nations (resolution 1373 (2001))

The Government of the Republic of Ecuador has taken note of and considered the Committee's additional questions and comments on the implementation of resolution 1373 (2001) contained in its note S/AC.40/2004/MS/OC.394 of 30 April 2004, signed by its Chairman, Mr. Inocencio Arias, and has prepared this report in response to that communication.

1. Implementation measures

Criminalization of terrorist acts and their financing

1.1. In its Inter-agency Committee against Terrorism, the Government of Ecuador considered the suitability of introducing appropriate legal provisions into the Penal Code with a view to the effective implementation of paragraph 1(b) of the resolution.

1.2. As of now, the Government of Ecuador does not have in place the kinds of legal norms recommended by the Counter-Terrorism Committee, except those contained in the draft Money-laundering Act. The Inter-agency Committee against Terrorism discussed the appropriateness of introducing the legal provisions proposed by the United Nations Committee through reforms to existing legal bodies with a view to fulfilling the requirements set out in paragraph 1(c) of the resolution.

1.3. In the draft reforms to the Penal Code, aimed at criminalizing the recruitment of members of terrorist groups, the Inter-agency Committee will recommend incorporating legal provisions on the recruitment of members of terrorist groups through deception and other activities undertaken by people who do not actually belong to an unlawful association.

1.4. Article 5 of the Penal Code provides that "any offence committed within the territory of the Republic, by Ecuadorians or foreigners, shall be prosecuted and punished under Ecuadorian law, unless otherwise specified by law. Offences committed in the territory of the Republic shall mean those committed on board Ecuadorian military or commercial vessels or aircraft, except in those cases where, in accordance with international law, commercial vessels or aircraft are subject to foreign criminal law; and those committed on the premises of an Ecuadorian embassy in a foreign country. An offence shall be deemed to have been committed in the national territory when the effects of the action or omission comprising it are intended to occur in Ecuador or in places subject to its jurisdiction.

Any national or foreigner who commits any of the following offences outside the national territory shall be subject to punishment under the law: 5(a) - violations of international law; 6(a) any other offence for which special legal provisions or international treaties establish the rule of Ecuadorian law.

1.5. The draft law to regulate the activities of non-profit organizations is still under consideration and the Inter-agency Committee against Terrorism has not finalized it.

* The attached documentation can be consulted in the Secretariat.

Nonetheless, it should be pointed out that the provisions of the proposed reforms to both the Penal Code and the Money-laundering Act will also be applicable in their entirety to funds collected by organizations which have or purport to have charitable, social or cultural aims, in order to ensure that they are not diverted for purposes other than their stated purposes.

Amendments to the Ecuadorian Penal Code referred to on page 3 of the third report of the Republic of Ecuador to the Counter-Terrorism Committee of the United Nations are still under consideration by the members of the National Congress.

The draft Money-laundering Act is still being reviewed by the National Congress.

The draft Money-laundering Act establishes under Title III on the Financial Intelligence Unit, Chapter I: Nature, Structure and Resources:

Article 14
Nature and Functions

The Financial Intelligence Unit (UIF) is established as a technical entity under public law, with headquarters in Quito, Metropolitan District, and shall be competent throughout the national territory, have its own legal personality and administrative, operational and financial autonomy. Its function shall be to carry out financial intelligence activities to obtain information on suspicious operations or transactions, which it shall transmit to the Public Prosecutor's Office.

Article 15
Structure

The Financial Intelligence Unit (UIF) shall be composed of the General Directorate, the Sub-Directorate and the specialized technical departments, whose functions and powers shall be laid down in the Organic Functional Rules and Regulations of the Unit.

Article 16
Resources

The resources of the Financial Intelligence Unit shall consist of:

(a) The funds allocated to it in the General National Budget;

(b) Movable and immovable assets transferred to it or which it acquires for any reason;

(c) Proceeds of its assets;

(d) Assistance under international treaties or from other sources;

(e) Donations, inheritances and legacies which shall be accepted under right of inventory;

(f) Proceeds of assets that have been seized under the provisions of article 59 of this law;

(g) Proceeds of property confiscated in other countries, with their cooperation, pursuant to the relevant international treaties;

(h) Amounts collected in fines under the law; and

(i) Other resources legally allocated to it.

Chapter II
Functions and Powers of the Unit:

Article 17

Acting through its Director-General, the Financial Intelligence Unit shall fulfil the following functions:

(a) Elaborate programmes and carry out actions to prevent and detect suspicious cases of money-laundering in accordance with this law;

(b) Request, in accordance with the law, from any individual or institution, public or private, such information as it may deem necessary to carry out its functions, receive and guard it;

(c) Request from any person or institution, public or private, information on suspicious operations for processing and analysis. It may further request, at any time, clarifications or explanations, which must be detailed and substantiated, and submitted within the time frame specified by the Director for that purpose;

(d) Have access, directly and without restrictions, to any type of information on the areas covered by this law, including physical, magnetic, computer and other archives, in possession of those coming under its jurisdiction. Twenty-four hours' advance notice must be given to exercise this power;

(e) Coordinate, promote and execute cooperation programmes with similar national and international bodies for the exchange of general or specific information on money-laundering and in order to take joint, rapid and efficient actions;

(f) Require special and reserved audits of reporting entities, which may be carried out by public or private institutions. Institutions assigned to conduct these audits shall abide by the norms of this Act;

(g) Inform the Public Prosecutor's office of suspicious operations relating to the conversion or transfer of assets for money-laundering;

(h) Create, maintain and update a confidential data base with all the information obtained as a result of its activities. Use of the data base shall be regulated;

(i) Organize periodic training programmes for the reporting entities and the judiciary on the prevention of money-laundering; and

(j) Inform the head of the requested institution of the claims of negative or negligent conduct by its civil servant or employee in respect of the requirements of the Financial Intelligence Unit (UIF). This shall be done without prejudice to the filing of claims with the Public Prosecutor's office in order to initiate appropriate legal action.

Those international treaties and protocols relating to terrorism to which Ecuador is not yet a party and which are mentioned in the resolution are currently in the process of being ratified and signed.

The Inter-agency Committee against Terrorism, with technical assistance from the United Nations, has launched a legal study on the application in domestic law of the provisions of the international instruments relating to terrorism already ratified by Ecuador for subsequent submission as a draft reform to the existing Penal Code.

Effectiveness of the protection of the financial system — 1.6 to 1.10

In accordance with the draft Money-laundering Act, all financial institutions accountable to the Superintendency of Banks and Insurance, including insurance and reinsurance companies, are required to file reports. Under the heading "Duties of other reporting entities", the draft establishes that compliance with obligations by financial institutions may be required, including the submission of reports, which is also a requirement for the other companies accountable to the Superintendency of Companies, including those handling money remittances and transfers.

While the draft Money-laundering Act does not expressly identify the reporting entities, article 9 on the duties of other reporting entities under the Act (Chapter IV on the duties of reporting entities under the Act) implicitly includes accountants and other professionals, who would thus be subject to the provisions of this draft.

Under article 47 of the draft Money-laundering Act, entities that fail to comply with their reporting obligations are subject to penalties which, for legal entities, can range from fines to the closing down of the establishment and, for individuals, from fines to prison terms. Civil servants, in addition to being subject to the penalties already indicated, will be dismissed from their jobs.

The draft Money-laundering Act focuses mainly on the prevention of money-laundering but also covers transactions linked to other criminal activities.

Companies which handle remittances and transfers must be registered with the Superintendency of Companies, and they must be issued an operating license by the Ministry of Public Works, Communications and Transport.

The Government of the Republic of Ecuador wishes to highlight the training received through a number of national and international organizations in which various actors were briefed on the control, prevention and punishment of money-laundering. During the first two weeks of August 2004, the United Nations will sponsor a course on tracing property for representatives of a number of relevant Ecuadorian institutions. Ecuadorian financial institutions are required to train their personnel to detect suspicious operations and in prevention in general.

Effectiveness of customs, immigration and border controls

1.11. As indicated in the previous report, a number of norms in the Ecuadorian legal order prohibit the use of Ecuadorian territory for terrorist acts of any kind, and authorize the authorities to take punitive legal action. Port facilities and ships have administrative procedures and security plans to deal with specific kinds of threats against them, which are consistent with the provisions of the Political Constitution of Ecuador, the National Security Act, the Penal Code, the Code of Criminal Procedure and also the relevant international instruments signed by Ecuador, which have been incorporated into domestic law.

At the national level, there are as yet no legal procedures to protect port facilities and ships, persons working in those port facilities and ships, cargo and cargo transport units, offshore installations and ships' stores from the risks of terrorist attacks (although work is in progress on a definition). The Government of Ecuador believes that international cooperation in this area would help to ensure full compliance with paragraph 2 (c) and (g) of the resolution.

1.12. The draft Money-laundering Act, currently being reviewed by the National Congress, makes no reference to controls over cross-border movement of precious stones and metals.

1.13. In the supplementary report of the Republic of Ecuador for 2003, information was provided on the computerized system introduced in the Quito and Guayaquil international airports to monitor the entry and exit of nationals and foreigners. Ecuadorian airport authorities are able to provide advance cargo and passenger information to the competent national authorities through existing administrative departments such as the General Directorate of Migration and the Ministry of Government and Police, which work directly with the military and police intelligence units established for this purpose. At the international level, the Government of Ecuador has the capacity to respond to questions from other States through regular channels. The participation of the International Criminal Police Organization (Interpol) is particularly noteworthy.

1.14. The Political Constitution of the Republic of Ecuador, in Title II on Residents, Chapter I on Ecuadorians, establishes that:

Article 6

Ecuadorians are regarded as such by birth or by naturalization. All Ecuadorians are citizens and, as such, enjoy the rights established in this Constitution, which shall be exercised in such cases and subject to such requirements as are determined by law.

Article 7

Ecuadorians by birth are:

1. Persons born in Ecuador.

2. Persons born abroad:

2.1. To a father or mother who is Ecuadorian by birth and is in the service of Ecuador or an international organization, or is temporarily absent from the country for any reason, unless otherwise specified.

2.2. To a father or mother who is Ecuadorian by birth, domiciled in Ecuador and manifesting an interest in being Ecuadorian.

2.3. To a father or mother who is Ecuadorian by birth. Parents must have shown, in accordance with the law, an interest in being Ecuadorians, between 18 and 21 years of ages, even though they may reside abroad.

Article 8

Naturalized Ecuadorians are:

1. Persons who are granted Ecuadorian citizenship for providing outstanding service to the country.

2. Persons who obtain a naturalization letter.

3. Persons adopted as children by an Ecuadorian when they are minors. On becoming legally of age, they shall keep their Ecuadorian citizenship if they do not otherwise specify.

4. Persons born abroad to foreign parents who are naturalized in Ecuador while they are minors. On reaching the age of 18 years, they shall keep their Ecuadorian citizenship if they do not expressly renounce it.

5. Residents of foreign territory in the border areas who can prove that they belong to the same ancestral Ecuadorian village, subject to the relevant international conventions and treaties, and who expressly indicate their wish to be Ecuadorian.

Article 9

Citizenship shall not be forfeited as a result of marriage or its dissolution.

Article 10

Persons who acquire Ecuadorian citizenship in accordance with the principle of reciprocity and the treaties concluded and as a result of their express desire to do so, may retain their citizenship or nationality of origin.

Article 11

Those who have Ecuadorian citizenship at the time this Constitution is adopted shall continue to enjoy it.

Ecuadorians by birth who are or were naturalized in another country may keep their Ecuadorian citizenship.

The State shall endeavour to protect Ecuadorians abroad.

Article 12

Ecuadorian citizenship shall be forfeited upon revocation of the naturalization letter and may be restored by following the proper legal procedures.

Chapter 2 on Foreigners

Article 13

Foreigners shall enjoy the same rights as Ecuadorians, subject to the limitations established by the Constitution and the law.

Article 14

Contracts concluded by institutions of the State with foreign individuals or legal entities shall implicitly entail the renunciation of all diplomatic claims. If such contracts were concluded in the territory of Ecuador, they cannot be subject to foreign jurisdictions, except in the case of international conventions.

Article 15

Foreign individuals or legal entities may not acquire on any grounds land or property in national security zones with the intent of financial gain.